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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 TROY ANTHONY PESINA,
9 Plaintiff,
10 vs.
11 MR. STOCKWELL, J. ROLLINS,
12 and POWELL,
13 Defendants.

NO. CV-10-441-JPH
ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING FIRST AMENDED
COMPLAINT IN PART WITHOUT
PREJUDICE

14 Magistrate Judge Hutton filed a Report and Recommendation on April 8, 2011,
15 recommending Mr. Pesina's First Amended Complaint be dismissed in part without
16 prejudice (ECF No. 19). . Plaintiff, a prisoner currently housed at the Coyote Ridge
17 Correction Center, is proceeding *pro se* and *in forma pauperis*; Defendants have not
18 been served.

19 In his First Amended Complaint, Petitioner had presented claims which were not
20 exhausted prior to commencement of this action in December 2010, and he failed to
21 assert any facts against Defendants J. Key or R. Herzog. *Taylor v. List*, 880 F.2d 1040,
22 1045 (9th Cir. 1989) . There being no objections, the court **ADOPTS** the Report and
23 Recommendation. The First Amended Complaint is **DISMISSED in part without**
24 **prejudice.**

25 **IT IS ORDERED** Plaintiff's claims against Defendants Maggie Miller-Stout, M.
26 Jackson, Bollinger, Avery and Garvin are **DISMISSED without prejudice** under 42
27 ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
28 FIRST AMENDED COMPLAINT IN PART WITHOUT PREJUDICE -- 1

1 U.S.C. § 1997e(a). These Defendants shall be **TERMINATED** from this action, and the
2 allegations beginning at page 5, items 11-32, are **STRICKEN** with leave to file in a
3 separate action. **IT IS FURTHER ORDERED** Defendants J. Key and R. Herzog are
4 **DISMISSED** without prejudice and **TERMINATED** from this action.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
6 Order and forward a copy to Plaintiff.

7 **DATED** this 13th day of May, 2011.

8 *s/Lonny R. Sukko*

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LONNY R. SUKO
UNITED STATES DISTRICT JUDGE

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